IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

No. 1141

BARBARA HUTTER, Executrix of the Estate of [illegible],

*Petitioner,*

vs.

RICHARD C. LINDSTROM, Acting Attorney General, and JOHN P. FOLEY,

*Respondents.*

**Petition for Writ of Certiorari to the Superior Court of the State of California in and for the County of San Francisco.**


WILLIAM FRENCH SMITH
634 South Spring Street
Los Angeles 14, California
*Attorney for Petitioner.*

*Of Counsel:*

GIBSON, DUNN & CRUTCHER
634 South Spring Street
Los Angeles 14, California

PAUL F. KELLY
HESSION, ROSENTHAL, HARRIS & KELLY
151 Second Avenue
San Mateo, California



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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

BURGERMEISTER BREWING CORPORATION,

*Petitioner,*

*vs.*

RICHARD C. LINDSTROM, ARCHIE ALDINI, and JOHN P. FOLEY,

*Respondents.*

## Petition for Writ of Certiorari to the Superior Court of the State of California in and for the County of San Francisco.

Petitioner Burgermeister Brewing Corporation, a corporation, prays that a writ of certiorari issue to review the judgment of the Superior Court of the State of California in and for the County of San Francisco rendered against Petitioner and in favor of Respondents.

### Proceedings Below.

The proceedings were instituted by Respondents who filed claims against Petitioner in the Small Claims Division of the Municipal Court of the City of San Francisco. Judgment was for Respondents. No formal opinion was rendered by the Small Claims Court but the basis of the decision is stated in a letter signed

by the judge of that Court [Clk. Tr. p. 5 *et seq.*]. Appeal was taken under California law to the Superior Court of the State of California in and for the County of San Francisco which heard the matter *de novo*. Judgment was again rendered for Respondents [Clk. Tr. pp. 75-77]. A timely motion for a new trial was filed [Clk. Tr. p. 78], which motion was denied [Clk. Tr. p. 94].

No further appeal is provided under California law. The decision of the California Superior Court is therefore the final decision of the courts of the State of California.

**Jurisdiction.**

The jurisdiction of this Court is invoked under the Labor Management Relations Act of 1947, Section 301 (61 Stat. 156, 29 U. S. C. §185) by Petitioner, which is engaged in a business affecting commerce as defined in the Act.

In this action, which is within the scope of Section 301, the state courts applied law which was contrary to and in conflict with federal labor policy. Federal substantive law is to be applied under Section 301. A judgment of a state court failing to apply controlling federal law or applying inconsistent or conflicting law, may be reviewed by writ of certiorari.

28 U. S. C. A. Section 1257(3).

> "A case or controversy arising under §301(a) is, therefore, one within the purview of judicial power as defined in Article 3."
>
> *Textile Workers Union v. Lincoln Mills* (1957), 353 U. S. 448, 457, 1 L. Ed. 2d 972, 77 S. Ct. 912.

Where a state court is bound to apply controlling federal law and a question is raised as to whether it has done so, a federal question is created which is reviewable by this Court.

> "So here, in trying this case the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected. Whether it did so raises a federal question reviewable here under §237(b) of the Judicial Code, 28 U. S. C. A. §344 (b)."
>
> *Garrett v. Moore-McCormack Co.* (1942), 317 U. S. 239, 245-246, 87 L. Ed. 239, 244, 63 S. Ct. 246.

This is true even if the action in the state court is based upon an asserted non-federal claim but a defense is set up under federal law.

> "But if, in the course of a suit begun in a state court on an asserted non-federal claim, a defense is set up under the federal Constitution or laws, and if the state court decides such question of federal law, then the judgment of the state court may be reviewed by certiorari under 28 U. S. C. §1257(3). . . ."
>
> *Doucette v. Vincent* (1st Cir. 1952), 194 F. 2d 834, 845.

## Questions Presented for Review.

### First Question.

Whether in an action brought by an individual employee in a state court to enforce the provisions of a collective bargaining agreement covering employees in an industry affecting commerce, the state court, in view of the federal labor policy declared by this Court under Section 301, must apply federal substantive law which provides that where the validity of the claim is dependent upon a disputed interpretation of the agreement and the agreement provides for arbitration of such dispute, the dispute must be settled within the scope of the grievance and arbitration provisions of the agreement.

### Second Question.

Whether an individual employee may enforce the terms of a collective bargaining agreement in a state court with respect to a "uniquely personal claim" under *Association v. Westinghouse Elec. Corp.* (1955), 348 U. S. 437, 99 L. Ed. 510, 75 S. Ct. 488, where the validity of the claim depends upon, and the court would have to decide the disputed interpretation of a collective bargaining agreement, and such agreement specifically provides the machinery for arbitration of such dispute.

## Statutory Provision Involved.

Section 301(a) of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185(a), provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

## Statement of the Case.

Petitioner is party to a collective bargaining agreement with the Teamster Brewery and Soft Drink Workers Joint Board of California, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America (referred to herein as the "Union"). The agreement appears in the Clerk's Transcript page 67 ff. The Union represents the production employees of Petitioner. The agreement provides that any grievance involving the interpretation of the agreement shall be submitted to arbitration for determination. Excerpts from this provision of the agreement is set forth in the Appendix, page 1.

On Friday, August 7, 1959, the employees of drayage and trucking firms doing business with Petitioner unexpectedly struck their employers. As a result, Petitioner was unable to obtain materials and supplies and

was required to curtail its production operations. It was therefore necessary to lay off at the end of the week, approximately sixty employees including Respondents, all represented by the Union. Notice of lay-off was given to the employees on Friday morning. Respondents were recalled to work the latter part of the following week.

Respondents claimed that they were entitled to pay for the time they were on lay-off because (1) the proper notice prior to a lay-off had not been given as required by Section 5(h) of the Agreement, and (2) such pay was required by Section 34(e) of the Agreement.

Sections 5(h) and 34(e) are set forth in the Appendix, page 2.

Section 5(h) required that the employer notify the Union by 11:00 o'clock a.m. Thursday of each week of employees to be laid off at the end of the work week. Such notice, however, was not required when it could not be given due to "equipment breakdown, acts of God, or other reasons beyond the control of the party." Petitioner contended that the unexpected strike came within the exception and that the notice was not required. The Respondents denied this contention. With respect to Section 34(e) Petitioner contended this section applied only to lay-offs and not to recalls from lay-offs.

The dispute solely involved the interpretation of the Agreement. This was the position of Respondents below. Petitioner contended that the disputed interpretation could be decided only in arbitration. Excerpts from the trial transcript and briefs in these respects appear in the Appendix, pages 3-5.

The Union filed an oral grievance on behalf of Respondents and others but did not process the grievance further. No demand for arbitration was made and no arbitration took place as to the disputed meaning of the provisions of the Agreement in question.

Thereafter, complaints for wages due were filed by Respondents with the Division of Labor Law Enforcement of the Department of Industrial Relations of the State of California. Petitioner contended before the Division that the issues involved were subject to arbitration under the Agreement. The Division dismissed the complaints upon this ground.

Respondents then filed claims with the Small Claims Division of the Municipal Court of the City of San Francisco. The Court rejected Petitioner's position that the issues were subject to arbitration and that the court was without jurisdiction to decide them. Instead it purported to interpret the provisions of the agreement and decide the issues on the merits. It granted judgment in favor of Respondents.

On appeal to the Superior Court of the State of California in and for the County of San Francisco, that court also rejected Petitioner's position that this was a matter for arbitration and that the court was without jurisdiction. It also purported to interpret the agreement and decided the issues on the merits. It granted judgment in favor of Respondents. A motion for a new trial was denied. This decision of the California Superior Court is the final decision of the California courts.

## Argument.

### Reasons for Granting the Petition.

Neither question presented in this case has been expressly decided by this Court. The answer to both is essential in view of the great volume of litigation in the federal and state courts involving individual employees, employers and labor organizations under collective bargaining agreements. Much confusion already exists in the cases deciding questions in this field.

I.

The first basic question presented here is whether in an action brought by an individual employee in a state court to enforce the provisions of a collective bargaining agreement covering employees in an industry affecting commerce, the state court, in view of the federal labor policy declared by this Court under Section 301, must apply federal substantive law.

We submit that if federal substantive law is not to be applied, the policy established by federal law concerning arbitration under collective bargaining agreements, would be frustrated. Major conflicts would develop in the law and the recently enunciated federal policy would be defeated. This policy has been declared in a series of decisions by this Court.

In *Textile Workers Union v. Lincoln Mills* (1957), 353 U. S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912, the Court held that Section 301 authorized the courts to fashion and apply substantive law based upon the policy of our national labor laws. That section, the Court said, "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be

best obtained only in that way." Accordingly, the Court affirmed the action of the District Court under Section 301 compelling an employer to arbitrate a controversy concerning work loads and work assignments in accordance with the arbitration requirements of a collective bargaining agreement.

In 1960 this Court implemented the policy enunciated in *Lincoln Mills* and fashioned a significant body of federal law relating to the arbitration of disputes arising under collective bargaining agreements.

*United Steelworkers v. America Mfg. Co.* (1960) 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343, holds in effect that under an arbitration provision requiring that disputes "as to the meaning, interpretation and application of the provisions of this agreement" be submitted to arbitration, a controversy is subject to arbitration even though the claim is patently frivolous and without merit. This Court said:

> "Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 USC § 173(d), states, 'Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . .' That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.
>
> * * *
>
> "The function of the court is very limited when the parties have agreed to submit all questions of

contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. * * *"

*United Steelworkers v. American Mfg. Co.*, 363 U. S. 564, 566-568.

In *United Steelworkers v. Warrior & Gulf Navigation Co.* (1960), 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347, the Court said:

"But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. * * *

"Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. * * *

* * *

". . . [T]o be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. * * * Doubts should be resolved in favor of coverage."

*United Steelworkers v. Warrior & G. Nav. Co.*, 363 U. S. 574, 580-583.

In *United Steelworkers v. Enterprise Wheel and Car Corp.* (1960), 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358, the Court said:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the award. * * *
>
> * * *
>
> ". . . [T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."
>
> *United Steelworkers v. Enterprise Corp.*, 363 U. S. 593, 596, 599.

Under these decisions the policy of the federal law is clear: Arbitration is a favored method of dispute settlement in the industrial relations field. Where a dispute exists as to the interpretation of the provisions of a collective bargaining agreement and the agreement provides for arbitration of such disputes, the dispute must be decided in arbitration and not by the courts. Doubts are to be resolved in favor of arbitration. The function of the courts is stated to be limited to the narrow one of determining whether an agreement to arbitrate the controversy exists.

The courts below did not apply this law but a different and conflicting law.

If under the identical collective bargaining agreement with an arbitration provision for the settlement of disputes, any individual employee could sue in the state courts for his own interpretation of the agreement, the federal policy would be frustrated and the scheme of industrial self-government seriously impaired. Under the same agreement one interpretation could result from arbitration in accordance with the agreement and with federal policy. In addition, any number of conflicting interpretations could also be made by the state courts. The interpretation would depend upon the forum chosen. This would create a situation clearly contrary to and in defeat of the policy enunciated by this Court.

The law applied by the state courts should be no more extensive concerning the same agreement than that applied by the federal courts. At least, a conflict between the two should not exist; state law should be compatible with federal policy in this field. Otherwise, the implementation of federal policy would be impossible to achieve.

*Lincoln Mills* expressly recognizes the necessity for the compatibility of state law with federal policy.

> "The question then is, what is the substantive law to be applied in suits under §301(a)? We conclude that the substantive law to apply in suits under §301(a) is federal law which the courts must fashion from the policy of our national labor laws. . . . Federal interpretation of the federal law will govern, not state law. [Cases Cited.] But state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate the federal policy. [Cases Cited.] Any state law applied, however, will be

absorbed as federal law and will not be an independent source of private rights."

*Textile Workers Union v. Lincoln Mills* (1957), 353 U. S. 448, 456-457.

*Lincoln Mills* involved an action brought in a federal court. The law applied by state court's however, should not be in conflict with that fashioned pursuant to this declaration.

In *Local 24 of I.B. of T., C., W. & H. v. Oliver* (1959), 358 U. S. 283, 3 L. Ed. 2d 312, 79 S. Ct. 297, with respect to a different section of the Act, the Court said:

"Federal law here created the duty upon the parties to bargain collectively; Congress has provided for a system of federal law applicable to the agreement the parties made in response to that duty, Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912; . . . Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State. [Cases cited.]"

*Local 24 of I.B. of T., C., W. & H. v. Oliver*, 358 U. S. 283, 296.

The courts below did not apply federal law but on the contrary acted in direct opposition to established federal policy. The arbitration process for which the parties had contracted was circumvented. The action of the courts below should be reviewed and set aside.

II.

A second basic question is raised in this case as to the effect of *Association v. Westinghouse Elec. Corp.* (1955), 348 U. S. 437, 99 L. Ed. 510, 75 S. Ct. 488. Respondents successfully urged in the courts below that the claims involved here are uniquely personal claims and that under *Westinghouse* actions thereon may be brought by the individual employee in the state courts even though interpretation of the agreement was required and arbitration machinery is provided in the agreement.

In *Westinghouse* the Court held that Section 301 did not permit a union to sue on behalf of employees for accrued wages based upon an alleged violation of a collective bargaining agreement: unions do not have any standing to file an action "based upon an employer's failure to comply with terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee." As stated by Justice Frankfurter, employees could enforce such uniquely personal rights in the state courts.

Subsequent to *Westinghouse*, a number of Circuit Courts of Appeal have held that uniquely personal claims are individual rights and suit must be brought by the individuals involved and not by the union under the collective bargaining agreement. This has been true even though the question of the interpretation or violation of the collective bargaining agreement may be involved.

See:

*United Steelworkers v. Pullman-Standard Car Mfg. Co.* (3rd Cir. 1957), 241 F.2d 547

(Unpaid pension payments based upon the interpretation of pension provisions of a collective bargaining agreement);

*Local Lodge 2040, Internat'l Ass'n of Mach. v. Servel, Inc.* (7th Cir. 1959), 268 F.2d 692 (Alleged breach of collective bargaining agreement by permanently dismissing employees and claim for holiday and vacation pay arising out of the agreement);

*United Steelworkers of America v. New Park Mining Co.* (10th Cir. 1959), 273 F.2d 352 (Recovery of wages and vacation pay due under a collective bargaining agreement);

*Mississippi Valley Electric Co. v. Local 130, Etc.* (5th Cir. 1960), 278 F.2d 764 (Action for wages allegedly due under an award made pursuant to an arbitration provision of a collective bargaining agreement);

*Silverton v. Valley Transit Cement Company* (9th Cir. 1957), 249 F.2d 409 (Action for wages allegedly due under a collective bargaining agreement).

A number of decisions of the Circuit Courts of Appeal have enforced agreements to arbitrate disputes in accordance with the arbitration provision of the collective bargaining agreement or have enforced arbitration awards issued pursuant thereto.

See:

*Textile Workers Union of America v. Cone Mills Corp.* (4th Cir. 1959), 268 F.2d 920;

*A. L. Kornman Co. v. Amalgamated Clothing Workers* (6th Cir. 1959), 264 F.2d 733;
*Item Company v. New Orleans Newspaper Guild* (5th Cir. 1958), 256 F.2d 855.

*Westinghouse* did not involve the scope of contract provisions concerning arbitration but only the status of the union to sue. On uniquely personal claims the employees were held to have an individual right to sue in the state courts. We submit, however, that if the validity of the "uniquely personal" claim is dependent upon the interpretation of the collective bargaining agreement providing for arbitration, such interpretation must be made not by the state courts but in arbitration as provided in the agreement. If not, diverse interpretations of the same agreement could again be the result and the forum chosen, not the merits, could be determinative.

The interest of a union and an employer is not any less in a disputed interpretation which may involve a uniquely personal claim than it is in other types of contract interpretation. Each is clearly interested in any binding interpretation of its agreement. The contracting parties bargained for a single interpretation in arbitration. If the law applied by the courts below were sustained, the contracting parties could be involved in a host of court actions purporting to interpret their agreement.

In the instant case, the federal policy clearly requires that the disputed interpretation of Sections 5(h) and 34(e) be decided by arbitration as provided in the collective bargaining agreement. The state courts, however, have invaded the province of the arbitrator, have

ignored the arbitration requirements of the agreement, and have purported to interpret the disputed provisions. If the state court in an action by individual employees under a collective bargaining agreement, applies law which ignores the arbitration process and is thereby in direct conflict with federal policy, the chaos and threat to industrial peace which the policy expressed in the *Lincoln Mills* and *Steelworkers* cases was designed to prevent, would be encouraged, and federal policy imperilled. The entire scheme for the private settlement of disputes in the labor relations field could be circumvented.

We believe that the questions raised by this Petition are substantial. We respectfully urge that it be granted.

Respectfully submitted,

WILLIAM FRENCH SMITH,
*Attorney for Petitioner.*

*Of Counsel:*

GIBSON, DUNN & CRUTCHER,
PAUL F. KELLY,
HESSION, ROBB, CREEDON, HAMLIN & KELLY.

August 17, 1961.

## APPENDIX.

### Excerpts From the Applicable Collective Bargaining Agreement

Section 29, Adjustments of Disputes, provides in part as follows:

"*Section 29.* Adjustments of Disputes.

"(a) Any dispute or grievance arising at or involving an establishment subject to this Agreement shall be disposed of as follows:

* * *

"(4) Any grievance that involves the interpretation of this agreement . . . shall be submitted to arbitration through a signatory association and the Joint Board as follows:

* * *"

The entire section appears at pages 47 to 52 of the agreement [Clk. Tr. p. 67 ff].

Section 5(h) of the Agreement provides as follows:

* * *

"(h) This subsection shall apply only to an individual Employer when he has five (5) or more persons performing work covered by this Agreement. The Individual Employer will notify the employment office of the Local Union with jurisdiction by 11:00 o'clock a.m. Thursday of each week of the names of brewers, bottlers, checkers or shipping and receiving clerks to be laid off at the end of the work week, and the number of such employees to be hired at the start of the work week next following. The Local Union will notify the Individual Employer the following day not later than 2:00 o'clock p.m. of the number of such employees to be dispatched for employment on the following Monday to displace new or temporary employees, and the names of such employees the Local Union was able to contact and dispatch up to that time. The above provisions will not apply when the failure to give notice by the time specified was due to equipment breakdown, acts of God, or other reasons beyond the control of the party."

Section 34(e) provides:

* * *

"(e) There shall be no laying off for any fractional part of a day or week."

## The Issue Decided by the Courts Below Was Solely One of Contract Interpretation

At the trial before the Superior Court the following occurred:

"The Court: In this Burgermeister matter, apparently it is an appeal from the Small Claims Court involving the interpretation of an agreement between the Union and the Employers, is that right?

"Mr. Kelly [Counsel for Defendant]: That is correct.

"Mr. Johnson [Counsel for the Plaintiffs]: That is correct." [Rep. Tr. p. 3.]

In his Opening Brief before the California Superior Court, counsel for Respondents states:

"I.

"The Facts

"These are actions by three (3) employees of Burgermeister Brewing Corporation, who were laid off in violation of a contract provision which prohibited layoffs of brewers for any fractional part of a day or week, to recover the balance of wages due them for the full work week commencing August 10, 1959.

* * *

"The contract provision in question appears in a separate division of the collective bargaining contract which sets forth the special wage rates and working conditions pertaining to brewers, and is designated Section 34 (e) thereof. * * *" [Clk. Tr. p. 27.]

* * *

"II.

"The Question for Decision

"On the basis of the foregoing, *the issue is one of contract interpretation*, namely, whether Section 5 (h) absolving the Company of the obligation to give notice of lay offs as of 11:00 o'clock A.M. of Thursday of the week preceding when the failure is due to 'reasons beyond the control of the party' is a limitation upon, and a qualification of the flat prohibition of lay-offs of brewers 'for any fractional part of a day or week' contained in Section 34 (e), such that the existence of such reasons would excuse the Company's violation of that prohibition." [Clk. Tr. p. 30, emphasis added.]

* * *

"Conclusion

"It is undisputed that the defendant Company laid off these three (3) plaintiffs in violation of the flat prohibition of Section 34 (e) of the collective bargaining contract against laying off for any fractional part of a day or week. The Company's attempt to excuse its violation of Section 34 (e) by reference to Section 5 (h) must fail because under elementary rules of contract interpretation the latter section cannot be construed as a limitation upon, or qualification of, the former. The plainiffs are therefore entitled to judgments for the balance of their week's wages in the amounts for which they had judgment in the Municipal Court." [Clk. Tr. pp. 36-37.]

PETITIONER CONTENDED AT THE TRIAL AND IN ITS BRIEFS THAT RESPONDENTS HAD NO STANDING TO SUE BECAUSE THE DISPUTE WAS SUBJECT TO ARBITRATION

At the trial:

"Mr. Kelly: * * * Our intention in submitting it in evidence is to show that the Union as a representative of the employees, and the employees, have refused to arbitrate this matter as provided for in the agreement, and as such we feel they have no standing in Court at all until they have exhausted their administrative remedies under the contract that they are parties to." [Rep. Tr. p. 16.] (See also p. 30.)

See also Petitioner's briefs and particularly pages 44 *et seq.*, page 79 *et seq.*, and page 86 *et seq.* of the Clerk's Transcript.